

Remarks

Applicant has reviewed the Office Action dated as mailed July 25, 2008. The present application contains claims 1, 4-5, 9-14, 22, 26-31, 33, 35-37, and 41-45. No claim amendments have been made.

Claim Rejections Under 35 U.S.C. §103

Claims 1, 12-14, 22, 26, 31, 33, 36, 37, and 41 were rejected under 35 U.S.C. §103(a) as being unpatentable over Holmes (U.S. Patent 3,586,798; hereinafter "Holmes") in view of Gardos (U.S. Publication No. 2004/0243416; hereinafter "Gardos"). This rejection is respectfully traversed.

Holmes discloses a conventional switch disposed on a user's chest and a control lever located below a user's chin so that when the user lowers his chin, the control arm is pushed toward the user's chest closing the contacts in the switch body, as shown in FIG. 2 of Holmes. In contrast, Gardos discloses a "speech-recognition system" that employs an accelerometer to determine head gestures, such as a nod or shake. See Gardos, paragraph [0017]. As described in paragraph [0026] of Gardos, the purpose of the invention of Gardos is:

"to increase the accuracy of an acoustic speech recognition program 160 running on a computer 108. For example, certain values of the head-nod parameter indicate that the spoken word is more likely to have a positive connotation, as in "yes," "correct," "okay," "good," while certain values of the head-shake parameter indicate that the spoken word is more likely to have a negative connotation, as in "no," "wrong," "bad." As another example, if the speech recognition program 160 recognizes a spoken word that can be interpreted as either "year" or "yeah", and the head action parameter indicates there was a head-nod, then there is a higher probability that the spoken word is "yeah."

Additionally, Gardos in paragraphs [0033] - [0035], recites:

"[0033] ...The head orientation and motion sensor 186 generated head action parameters based on signals from accelerometers contained in sensor 186. The lip position parameters and head action parameters are transmitted wirelessly to a computer 194.

[0034] ...Computer 194 combines the encoded speech signals and the lip position and head action parameters, and transmits the combined signal to a computer 196 at a remote location through network 192.

[0035] ... Computer 196 also synthesizes an animated talking head 200 on a display 202. The orientation and motion of the talking head 200 are determined by the head action parameters. The lip positions of the talking

head 200 are determined by the lip position parameters.”

Accordingly, Gardos teaches sensing the head action, encoding and transmitting the head action parameters to a computer at a remote location to control a talking head on a display as clearly described by Gardos and illustrated in Figure 4. A person of ordinary skill in the art would not be motivated to combine the talking head control system for improved speech recognition of Gardos with the neck-activated microphone switch of Holmes.

Further, Holmes clearly teaches moving the user’s chin to operate a switch residing on the user’s chest, which does not move. Replacing the switch of Holmes with the accelerometer of Gardos would clearly render the Holmes’ invention inoperative. Specifically, if the control switch of Holmes is replaced by the accelerometer of Gardos, the accelerometer located on the user’s chest would not detect head movement of a user to operate the switch, as required by Holmes in FIG. 2 and column 2, lines 67-75. Since head movement would not be detected in the combination of Holmes with Gardos, Holmes would no longer operate as intended and these references are non-combinable. For all of these reasons, Applicant respectfully submits that one skilled in the art would not have been motivated to combine the speech recognition system of Gardos with the chin-operated switch device of Holmes.

The Examiner agreed in the final Office Action dated as mailed September 25, 2008, stating “placing the motion sensor on the chest of the user of Holmes is nonsensical and unreasonable.” However, this improper combination is maintained because the Office Action suggests the devices both “sense the head motion of the user.” But the Examiner has not addressed the clear fact that the combination of these devices renders Holmes inoperable for its intended purpose. MPEP 2143.01(I) states that obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. Further, MPEP 2143.01(V) states:

“If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” See MPEP 2143.01(V)

Because the Office agrees that the Holmes device cannot be modified to include the accelerometer of Gardos, there is simply no motivation or suggestion to make the proposed modification as

required for a prima facie case of obviousness. Thus, a prima facie case of obviousness has not been made.

Applicant also submits that, even if Holmes and Gardos could be properly combined, the resulting combination still would not teach all of the features of Applicant's claims. For a proper rejection based on Section 103(a), the Office Action must show teachings corresponding to *all* of the claim limitations are present in or suggested by the prior art. M.P.E.P. § 2143.03. All of Applicant's claims contain recitations not disclosed by the prior art. For example, claim 1, in part, recites:

“a hands-free push-to-talk sensor or switch including at least one of an air pressure sensitive switch and a tilt sensor for sensing a change in a direction of force due to gravity on the tilt sensor when the tilt sensor is tilted more than a predetermined angle from a zero or normalized angle, wherein the hands-free push-to-talk sensor or switch is operable by at least one of the air pressure sensitive switch sensing a change in air pressure and the tilt sensor sensing a change in the direction of force due to gravity on the tilt sensor when the tilt sensor is tilted more than the predetermined angle from the zero or normalized angle”

In rejecting this feature of claim 1, the Office Action relies on column 2, lines 29-35 of Holmes. However, Holmes, in column 2 beginning at line 29, recites:

“[d]isposed upon base 11 is a microphone control switch indicated generally at 17. This switch includes a switch body 20 which is disclosed as being of the microswitch type characteristically including pressure-sensitive contacts. The switch body 20 may be of conventional switch construction having a normally open set of contacts one of which being on a flexible element for biased closing against a stationary contact. The closable or movable contact of the present switch body 20 is closed upon inward travel of a pushbutton 21, the button having a normally extended off position as shown in FIG. 2. Overlying the button is a plate 22 with a U-shape mounting bracket 22A hingedly mounted at 23 by a pin to the switch body 20, as been seen in FIG. 3. Further detailed description of the switch body 20 is believed unnecessary as such switch body structure is well known in the switch art.” (emphasis added)

Applicant respectfully submits that Holmes does not teach of a “tilt sensor.” As recited above, Holmes requires that his control switch 17 is operated by a wearer lowering his head so that

the control lever contacts and manually operates the pushbutton 21, as shown in Figure 2 of Holmes. Thus, Applicants submit that the control switch of Holmes is not a “tilt sensor.”

Additionally, claim 1 recites:

“... means to control operation of a communications device in response to signals from the push-to-talk sensor or switch, wherein the push-to-talk sensor or switch comprises the tilt sensor, wherein a transmit mode of the communications device is activated in response to the tilt sensor being tilted more than the predetermined angle from the zero or normalized angle of the direction of force due to gravity for a predetermined time duration.”

In rejecting this recitation, the Office Action cited column paragraphs [0025] and [0048] of Gardos, which recite:

“[0025] . . . Data from head orientation and motion sensor 112 is processed to produce time-stamped head action parameters that represent the head orientations and motions over time. Head orientation refers to the static position of the head relative to a vertical position. Head motion refers to movement of the head relative to an inertial reference, such as the ground on which the user is standing. In one example, the head action parameters represent time, tilt-left, tilt-right, tilt-forward, tilt-back, head-nod, and head-shake. Each of these parameters spans a range of values to indicate the degree of movement. In one example the parameters may indicate absolute deviation from an initial orientation or differential position from the last sample.

...

[0048] A change of head orientation or a particular head motion can also be used to indicate a change in the mode of the user's speech. For example, when using a word processor to dictate a document, the user may use one head orientation (such as facing straight forward) to indicate that the user's speech should be recognized as text and entered into the document. In another head orientation (such as slightly tilting down), the user's speech is recognized and used as commands to control actions of the word processor. For example, when the user says "erase sentence" while facing straight forward, the word processor enters the phrase "erase sentence" into the document. When the user says "erase sentence" while tilting the head slightly downward, the word processor erases the sentence just entered.”

Accordingly, Gardos is only discussing that the head orientation and head motion is measured to determine if the head position is a “tilt-left”, “tilt-right”, “head-nod”, and “head shake.” Nowhere does Gardos disclose that a tilt sensor is tilted for a predetermined time duration. In fact, Gardos

does not even mention any predetermined time duration. That is because Gardos is only concerned with determining head nods and head tilts to “increase the accuracy of an acoustic speech” such as a spoken “yes” or a “no.” (See paragraph [0026] of Gardos). The duration of time that the head is tilted to active the tilt sensor is not considered at all in Gardos. Thus, Gardos does not disclose a tilt sensor being activated in response to being tilted more than the predetermined angle from the zero or normalized angle of the direction of force due to gravity “for a predetermined time duration,” as recited in claim 1.

As previously discussed, Gardos teaches detecting head motions to more accurately detect what a person has said, such as for example a head-nod indicating the spoken word “yeah” rather than “year” (paragraph [0026] of Gardos) or to control movement of a talking head at a computer at a remote location (paragraphs [0033]-[0035] as discussed above). Applicant respectfully submits that Gardos also does not teach or suggest the features of the embodiment of the present invention as recited in amended claim 1.

For all of above reasons, Applicant respectfully submits that claim 1 is patentably distinguishable over Holmes and Gardos whether considered individually or combined, and reconsideration and withdrawal of the 35 U.S.C. §103 rejection of independent claim 1 is respectfully requested.

Regarding the rejection of claims 12-14, these claims recite additional features which further patentably distinguish over Holmes in view of Gardos. For example, claim 14 recites the push-to-talk device of claim 1 further comprises “a headset, wherein **the** push-to-talk sensor or switch is mounted to the headset.” In rejecting claim 14, the Office Action recited:

“... the combination of Holmes and Gardos also teaches the device of claim 1, further comprising a headset (see Gardos, fig. 1, headset 100), wherein the push-to-talk sensor or switch is mounted to the headset (see Gardos, fig. 2, sensor 112).”

Accordingly, the Office Action is somehow suggesting that the control switch of Holmes (the Office Action previously cited the control switch 20 of Holmes as the “push-to-talk” sensor (*see* final Office Action, page 2)) is mounted to the headset of Gardos. Clearly, this is nonsensical and not taught in Gardos. One skilled in the art would not mount the control switch of Holmes to the headset of Gardos. Additionally, neither Holmes nor Gardos teaches of a “push-to-talk sensor or switch” or mounting a “push-to-talk sensor or switch” to a headset. Applicant respectfully submits

that in no way does the combination of Holmes and Gardos teach of a “push-to-talk sensor or switch” being mounted to a headset. Accordingly, Applicant respectfully submits that claim 14 is patentably distinguishable over Holmes in view of Gardos, and reconsideration and withdrawal of the 35 U.S.C. §103 rejection of claim 14 is respectfully requested.

Additionally, claims 12-14 depend either directly or indirectly from independent claim 1. Because of this dependency, these claims contain all of the features of independent claim 1. Therefore, these claims are also submitted to be patentably distinguishable over Holmes in view of Gardos, and reconsideration and withdrawal of the 35 U.S.C. §103 rejections of claims 12-14 is respectfully solicited.

Turning now to the rejection of independent claim 22 under 35 U.S.C. §103(a) as being unpatentable over Holmes in view of Gardos, claim 22 recites:

“. . . detecting at least one of a tilt angle caused by a change in a direction of force due to gravity on a tilt sensor when the tilt sensor is tilted by more than a predetermined angle from a zero or normalized angle for a predetermined time duration, or air pressure”

As previously discussed, Gardos and Holmes are non-combinable. Indeed, one skilled in the art would not have resorted to the speech recognition system of Gardos to solve the problem of controlling operations of a push-to-talk functionality by detecting a tilt angle caused by a change in a direction of force due to gravity on a tilt sensor when the tilt sensor is tilted by more than a predetermined angle from a zero or normalized angle for a predetermined time duration. Also, as previously discussed, even if Holmes were modified to include the accelerometer of Gardos, the resulting modification would no longer operate as intended. Indeed, if the control switch of Holmes is substituted with the accelerometer of Gardos, the accelerometer would no longer detect the head movement because the accelerometer would be located on a user’s chest. If head movement is not detected, then the combination of Holmes and Gardos would not control operation of the device and thus, the combination would no longer operate as intended. As such, the references are non-combinable and the 103 rejection of this claim should be withdrawn. See MPEP 2143.01.

Additionally, claim 22 recites similar features to independent claim 1. Therefore, independent claim 22 is respectfully submitted to be patentably distinguishable over Holmes in view of Gardos for the same reasons as discussed with respect to claim 1. Reconsideration and withdrawal of the 35 U.S.C. §103 rejection of claim 22 is, therefore, respectfully requested.

Regarding the rejection of claim 26 under 35 U.S.C. §103(a) as being anticipated by Holmes in view of Gardos, these claims recite additional features which further patentably distinguish over Holmes in view of Gardos. Additionally, claim 26 depends directly from independent claim 22, and by virtue of that dependency, contains all of the features of independent claim 22. Therefore, claim 26 is also submitted to be patentably distinguishable over Holmes and Gardos for the same reasons as discussed with respect to claim 22. Reconsideration and withdrawal of the Section 103 rejection of claim 26 is respectfully solicited.

With respect to the rejection of independent claim 31 under 35 U.S.C. §103(a) as being unpatentable over Holmes in view of Gardos, claim 31 recites similar features to independent claim 1. Therefore, independent claim 31 is respectfully submitted to be patentably distinguishable over Holmes in view of Gardos for the same reasons as discussed with respect to claim 1. Reconsideration and withdrawal of the 35 U.S.C. §103 rejection of claim 31 is, therefore, respectfully requested.

Turning now to the rejection of claims 33 and 36 under 35 U.S.C. §103(a) as being unpatentable over Holmes in view of Gardos, these claims recite additional features which further patentably distinguish over Holmes in view of Gardos. Additionally, claims 33 and 36 depend directly from independent claim 31. As a result of this dependency, claims 33 and 36 include all of the features of independent claim 31. Therefore, claims 33 and 36 are also submitted to be patentably distinguishable over Holmes in view of Gardos, and reconsideration and withdrawal of the Section 103 rejection of these claims is respectfully requested.

With regard to the rejection of independent claim 37 under 35 U.S.C. §103(a) as being unpatentable over Holmes in view of Gardos, claim 37 recites similar features to independent claim 22. Therefore, independent claim 37 is submitted to be patentably distinguishable over Holmes in view of Gardos for the same reasons as discussed with respect to independent claim 22. Reconsideration and withdrawal of the Section 103 rejection of independent claim 37 is respectfully solicited.

With respect to the rejection of claim 41 under 35 U.S.C. §103(a) as being unpatentable over Holmes in view of Gardos, these claims cite additional features that further patentably distinguish over Holmes in view of Gardos. Claim 41 depends directly from independent claim 37. Because of this dependency, claim 41 contains all of the features of independent claim 37. Therefore, claim 41

is also submitted to be patentably distinguishable over Holmes in view of Gardos, and reconsideration and withdrawal of the 35 U.S.C. §103(a) rejection of claim 41 is respectfully requested.

Claims 4, 5, 27 and 42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Holmes in view of Gardos and further in view of U.S. Patent No. 5,101,504 to Lenz (hereinafter "Lenz"). This rejection is respectfully traversed. These claims recite features which patentably distinguish over the cited documents. For example, claim 4 recites:

"means for maintaining the communications device in the transmit mode in response to at least one of detecting a voice signal or the tilt sensor being tilted more than the predetermined angle after a selected time delay."

In rejecting claim 4, the Office Action recited column 3, lines 31-35 and lines 40-43 of Lenz, which recite:

"In the most common two-way radios where the switch must be depressed as long as the person is talking and transmitting, the wearer can comfortably keep his shoulder raised for an extended period such as a minute while talking, all without affecting use of his hands and head. . . .

In order to indicate to the wearer when he has operated the switch, the switch is constructed so that it creates an easily heard "click" noise both when it is closed and when it is opened again."

Accordingly, Lenz merely discloses a switch that is constructed so that it creates a "click" noise. The Office Action on page 4 asserted that the "click" noise presents a selected time delay. Applicant respectfully disagrees. As clearly taught by Lenz, the switch is constructed to create the "easily heard click noise" so the operator knows when the switch is closed and opened. This feature of Lenz does not teach or suggest a selected time delay as provided by the present invention and as recited in claim 4.

The final Office Action dated as mailed September 25, 2008 stated that "the time needed for the 'click' noise to be heard is the . . . selected time delay." However, Applicants respectfully submit that the transmit mode of the radio in Lenz is independent of, and thus, not in response to, the user hearing the click noise. For example, in Lenz, the switch is depressed, activating the two-way radio, and a click noise is made which lets the operator know that the radio is on and the operator can talk. There is simply no disclosure of a "selected time delay" at all for

maintaining the Lenz device in transmit mode. Further, a user will hear the click noise instantaneously because the device is right beside of the user's ear and thus there will be no "time delay." Yet further, there is certainly no time delay that has been "selected." Applicants are at a complete loss to find the recitations of claim 4 in Lenz. Reconsideration of claim 4 is respectfully requested.

Further, neither Lenz, nor Holmes and Gardos show any recognition for the problem solved by the feature of the present invention as provided in claim 4, namely maintaining the communications device in the transmit mode while the user is speaking (voice signal) and during brief interruptions of the user speaking less than the selected time delay unless the sensor is being tilted more than the predetermined angle after the selected time delay, as provided by claim 4. Lenz clearly teaches that the user has to keep his shoulder raised while talking as indicated in the recitation above. Neither Lenz nor Holmes and Gardos teach or suggest a maintaining the transmit mode in response to the "tilt sensor being tilted more than the predetermined angle after a selected time delay."

Additionally, claims 4-5 depend directly from independent claim 1. Because of this dependence, claims 4 and 5 are submitted to include all of the features of claim 1. Applicant respectfully submits that Lenz adds nothing to the teachings of Holmes and Gardos so as to render claim 1 unpatentable. For all of the reasons discussed above, Applicant respectfully submits that claims 4 and 5 are patentably distinguishable over Holmes in view of Gardos and Lenz, and reconsideration and withdrawal of the 35 U.S.C. §103 rejections of claims 4 and 5 are respectfully requested.

Regarding the rejection of claims 27 and 42 under 35 U.S.C. §103(a) as being unpatentable over Holmes in view of Gardos and further in view of Lenz, claims 27 and 42 recite features similar to claims 4 and 5. Additionally, claim 27 depends directly from independent claim 22 and claim 42 depends directly from independent claim 37. Because of these dependencies, claims 27 and 42 include all of the features of the referenced independent claims. Applicant respectfully submits that Lenz adds nothing to the teachings of Holmes and Gardos so as to render independent claims 22 and 37 unpatentable. For all of these reasons, claims 27 and 42 are respectfully submitted to be patentably distinguishable over Holmes, Gardos and Lenz, and reconsideration and withdrawal of the Section 103 rejection of claims 27 and 42 is respectfully solicited.

Claims 9-11, 28-30, 35 and 43-45 were rejected under 35 U.S.C. §103(a) as being unpatentable over Holmes in view of Gardos, further in view of Lenz, yet further in view of U.S. Patent No. 4,426,733 to Brenig (hereinafter “Brenig”), and still yet further in view of U.S. Patent No. 6,594,632 to White (hereinafter “White”). These rejections are respectfully traversed. These claims recite features which patentably distinguish over the cited documents. For example, claim 9 recites:

“. . . the push-to-talk sensor or switch comprises the air pressure sensitive switch, wherein a transmit mode of the communications device is activated in response to the user blowing on the air pressure sensitive switch with an air pressure greater than a preset air pressure”

In rejecting claim 9, the Office Action cited column 2, lines 18-19 of Brenig, which recite:

“a microphone or other transducer is provided for receiving audible verbal phrases spoken by a human operator.”

Accordingly, Brenig discloses a microphone in a speech recognition system. Brenig does not teach or suggest a pressure sensitive switch nor does Brenig teach or suggest that a transmit mode of the communications device is activated in response to the user blowing on the air pressure sensitive switch with an air pressure greater than a preset air pressure as provided by the embodiment of the present invention recited in claim 9.

Additionally, in rejecting claim 9, the Office Action cited White. However, White also teaches speech recognition and does not teach or suggest a user blowing on an air pressure sensitive switch.

Claim 10 recites:

“. . . means for maintaining the communications device in a transmit mode in response to at least one of detecting a voice signal or the air pressure greater than the preset air pressure caused by the user blowing on the air pressure sensitive switch after a selected time delay.”

In rejecting claim 10, the Office Action cited Brenig. However, as stated above, Brenig only discusses speech recognition and does not disclose a means for maintaining the communications device in a transmit mode in response to at least one of detecting a voice signal or the air pressure greater than the preset air pressure caused by the user blowing on the air pressure sensitive switch after a selected time delay.

Claims 28-29, 35, and 43-44 recite similar features to claims 9 and 10. Additionally, claims 9-11 depend from independent claim 1, claims 28-30 depend from independent claim 22, claim 35 depends from independent claim 31, and claims 43-45 depend from independent claim 37. Because of these dependencies, claims 9-11, 28-30, 35 and 43-45 include all of the features of the referenced independent claims and any intermediate claims. Applicant respectfully submits that Brenig and White add nothing to the teachings of Holmes and Gardos so as to render independent claims 1, 22, 31 and 37 unpatentable. For all the reasons discussed above, Applicant respectfully submits that claims 9-11, 28-30, 35 and 43-45 are patentably distinguishable over Holmes, Gardos, Lenz, Brenig and White, whether considered individually or combined, and reconsideration and withdrawal of the 35 U.S.C. §103 rejection of claims 9-11, 28-30, 35 and 43-45 are respectfully requested.

Furthermore, Applicant submits that it is incumbent on the Office to view Applicant's claimed invention as a whole. As such, certain individual features from the cited references may not be arbitrarily chosen (while equally arbitrarily discarding other disclosed features) to merely lump together disparate features of different references as a mosaic in an attempt to meet the features of the rejected claims. Thus, the Office is not allowed to pick and choose just certain parts of different references and combine them. As such, Applicant submits that the combination of Holmes, Gardos, Lenz, Brenig and White is based on the use of impermissible hindsight and is only obvious if Applicant's disclosure is used as a template for the combination. Furthermore, the references are in different arts, the inventions are completely unrelated and, absent Applicant's own disclosure, there is no reason to make the combination suggested by the Office. Therefore, claims 9-11, 28-30, 35 and 43-45 are respectfully submitted to be patentably distinguishable over Holmes, Gardos, Lenz, Brenig and White, and reconsideration and withdrawal of the Section 103 rejection of claims 9-11, 28-30, 35 and 43-45 is respectfully solicited.

Conclusion

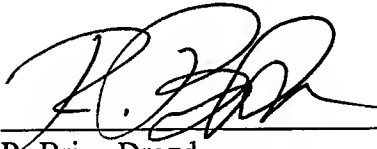
If the Examiner wishes to discuss any aspects of this amendment, please contact the undersigned at the telephone number indicated below.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 13-4365.

Respectfully submitted,

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